

In the Matter of)
)
Petition of XO Communications, LLC,) RM-11358
Covad Communications Group, Inc., NuVox)
Communications and Eschelon Telecom, inc. for) DA 07-209
A Rulemaking to Amend Part 51 Rules)
Applicable to Incumbent LEC Retirement of)
Copper Loops and Copper Subloops)

The Pennsylvania Public Utility Commission (PaPUC) files this Comment in response to the Federal Communication Commission’s (FCC) Public Notice at DA 07-207, issued January 30, 2007, (the “Copper Rulemaking Notice”). The Copper Rulemaking Notice seeks Comments and Reply Comments on several petitions for rulemaking (Copper Petitions). The Copper Petitions ask the FCC to amend and clarify the FCC’s rules on the retirement of copper loops and subloops.

Preliminary Observations. The PaPUC appreciates the opportunity to respond to the Copper Rulemaking Notice and Petitions.

APPENDIX B

constitute the views of any Commissioner or group of Commissioners. The Comment could change in response to subsequent events including filed Comments or developments under state and federal law.

The PaPUC Comment. The PaPUC urges the FCC to consider a rulemaking on copper loop abandonment for several reasons.

First, the Copper Petitions urge the FCC to examine the abandonment or retirement of copper loops given the FCC's determination in the Triennial Review Order (*TRRO Order*). In the *TRRO Order*, the FCC concluded that newly-constructed fiber loops which replace older copper loops are not subject to Section 251 unbundling requirements. Providers who deploy fiber networks can deny access to other competitors that rely on older copper loops to reach their end-user customers.

Second, the Copper Petitions identify several alleged deficiencies with the current rules. These include limited objection procedures and requirements that limit objections only to the timing of a retirement as opposed to the wisdom of a proposed retirement.

Third, the Copper Petitions propose several substantive amendments that warrant consideration. These include matters of defining "retirement" and an analysis of competitive impact. They also suggest development of notification and other formal procedures to examine any proposed loop retirements. They also ask the FCC to detail the type of information a proponent should submit when copper loop abandonment is under

consideration. These loops also provide for network redundancy in the event of a natural disaster or other untoward events such as terrorist attacks.

Finally, recent developments warrant examination of the alleged anti-competitive impacts set out in the Copper Petitions. The PaPUC notes a recent Vertical Systems Group claim that only 11.7% of business sites with more than 20 employees actually has access to fiber.¹ The remaining 88% rely on copper. While this residual 88% may be able to use 2BASE-TL using the inherent redundancy of multiple copper pairs to provide a fiber-like reliability, a rush to abandon those copper loops could prevent the ability of competitors to deploy this kind of technology to provide competitive services. That may be a particularly important consideration in states, unlike Pennsylvania, that lack statutory provisions designed to promote the deployment of an advanced network.

The PaPUC suggests that these preliminary observations warrant initiation of a rulemaking proceeding.

Respectfully submitted,
Pennsylvania Public Utility Commission

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¹ Bob Emerson, *“SIP Trunks Deliver the Promise of End-to-End Communications”* 5 *VON Magazine* 2, pp. 32-36, particularly p. 36.

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